

### **REMARKS**

The final Office Action dated September 5, 2008 addresses claims 1-7, 10-19, 21-27, 29-33, and 35. Claims 2-5, 13-16, and 25 are withdrawn while claims 1, 6, 7, 10-12, 17-19, 21-24, 26, 27, 29-33, and 35 stand rejected.

Applicants thank Examiner Shaffer and Examiner Robert for extending the courtesy of a personal interview to Applicants' representatives, Lisa Adams and Christina Sperry, on December 2, 2008.

#### ***Amendments to the Claims***

Applicants amend independent claims 1, 12, and 24. In particular, claim 1 is amended to recite a *spinal fixation element* and that the U-shaped receiver member has a distal cavity that movably seats the head of the bone-engaging member and that the U-shaped receiver member has a proximal recess that seats the spinal fixation element, the cavity and the recess including an opening extending therebetween and defined by the U-shaped receiver member, the opening further having a size that *allows a portion of the spinal fixation element to extend into the distal cavity* but prevents passage therethrough of the spinal fixation element seated in the proximal recess. Claim 12 is amended to recite that the proximal and distal portions of the cavity being spaced apart by opposed protrusions defined by the U-shaped receiver member *allow a portion of a spinal fixation element to extend into the cavity* but prevent contact between the bone-engaging member and the spinal fixation element. Claim 24 is amended to recite that the opening has a size that *allows a portion of a spinal fixation element to extend into the cavity* but prevents passage of the spinal fixation element therethrough. Support for these amendments can be found throughout the specification and drawings, for example in Figure 1D. No new matter is added.

#### ***Claim Rejections Pursuant to 35 U.S.C. § 103***

During the interview, the rejection of claims 1, 6, 7, 10-12, 17-19, 21-24, 26, 27, 29-33, and 35 pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Application No. 2004/0260284 ("Parker") in view of U.S. Application No. 2004/0049190 ("Biedermann") or alternatively in view of U.S. Patent No. 5,690,630 ("Errico") was discussed. Agreement was reached that the claims as

amended by this paper distinguish over Parker, Biedermann, and Errico alone or in any combination because no reference teaches or suggests an opening allowing a portion of the spinal fixation element to extend into the cavity, as required by independent claims 1, 12, and 24. Independent claims 1, 12, 24, and 32, as well as claims 6, 7, 10, 11, 17-19, 21-23, 26, 27, 29-31, 33, and 35 which depend therefrom, therefore represent allowable subject matter.

In light of the above, the present application is believed to be in condition for allowance and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Dated: December 5, 2008

Respectfully submitted,

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